

Application No. 09/800,792
Response to Final Office Action Dated 4/14/05
Reply to Office Action of 1/14/05

for the reasons set forth below and respectfully requests that the rejections be withdrawn. Reconsideration and allowance of the present application is respectfully requested.

Examiner will note that each of independent claims 1 and 35 recites the steps of positioning a wad of cotton in a rigid, self-supporting container body through an opening in the container body and sealing the container body opening in a significantly airtight fashion to form a closed container that defines a generally gas impermeable volume surrounding the wad of cotton candy to reduce moisture contact with the cotton candy and maintain its freshness. Each of independent claims 25 and 36 recites the steps of positioning a wad of cotton in a rigid, self-supporting container and sealing the rigid container around the wad of cotton candy so that the container maintains the cotton candy from moisture sufficient to degrade the cotton candy for a period of two weeks. Independent claim 15 recites a rigid, self-supporting container enclosing a wad of cotton candy within a sealed volume, with the container defining a significantly gas impermeable sealed volume that reduces moisture contact with the cotton candy to maintain the freshness of the cotton candy wad. Independent claim 30 recites a rigid, self-supporting container body enclosing a wad of cotton candy within a sealed volume so that the container body defines a static volume that maintains the cotton candy from moisture sufficient to degrade the cotton candy for a period of two weeks. Lastly, independent claim 31 recites a rigid, self-supporting container enclosing a wad of cotton

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candy within a sealed volume, with the container being significantly gas impermeable to establish a shelf life of the food product for at least one month.

Prior Art Rejections

While Applicant maintains for the reasons fully set forth in Applicant's prior responses that the prior art of record fails to teach or suggest placing a wad of cotton candy in a container with the wad in direct contact with an inner surface of the container as claimed, Applicant further submits that the prior art of record fails to teach or suggest a rigid, self-supporting container for enclosing a wad of cotton candy, wherein the container is sealed to reduce moisture contact with the cotton candy and maintain its freshness as claimed.

As Examiner properly recognizes, the cited prior art must be taken for what it teaches. Each of the San Francisco Examiner, Forbes, Charlotte Observer, Seattle Times, Akron Beacon Journal and Star Tribune articles discloses cotton candy sold in a bucket, but each is completely silent with respect to a sealed container as claimed by Applicant. There is no disclosure whatsoever in any of these prior art references that the buckets were sold with a sealing lid or the buckets were otherwise sealed for enclosing the wad of cotton candy to maintain its freshness as claimed.

The www.beyondtherainbow2oz.com website shows a Wizard of Oz souvenir bucket having a lid and also a cotton candy bag. The website is completely

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silent as to whether cotton candy was placed into the bucket and then sold to a consumer. Even if the prior art of record teaches placing cotton candy into the bucket as argued by Examiner, which Applicant does not concede, there is still no teaching or suggestion of placing a wad of cotton candy into the bucket and then sealing the bucket with its lid to enclose the wad of cotton candy in a sealed volume to maintain the freshness of the cotton candy as claimed by Applicant.

The Examiner has applied Packaging Week and Atlanta Constitution to argue that high barrier packaging for cotton candy is known. However, each of these references is directed to cotton candy packaged in a flexible bag and so taken alone, or in combination with the other prior art of record, simply does not teach or suggest a rigid, self-supporting container for enclosing a wad of cotton candy within a sealed volume as claimed by Applicants. While these references may address the desirability of increased shelf-life of cotton candy, they teach an entirely different packaging structure or packaging method than that claimed by Applicant.

Golub discloses a transparent film which serves as packaging for a wad of cotton candy and relies on a needle to inject pressurized air into the thermoplastic bag to thereby protect the enclosed cotton candy wad. While Golub may address the desirability of reducing compression of the cotton candy wad, the reference actually teaches away from Applicant's claimed invention since it teaches the use of a bag and the introduction of moisture laden air into the bag to protect the cotton candy wad.

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Golub clearly does not teach or suggest a rigid, self-supporting container or such a container that is sealed to reduce moisture contact with the cotton candy and maintain its freshness as claimed.

Newman, Beall and Ruff are each directed to containers for food items but certainly do not teach or suggest the use of such containers for enclosing a wad of cotton candy as claimed. None of these references deal with moisture degradation of cotton candy, none deal with compression damage to cotton candy and none provide any suggestion that any disclosure therein could be joined with the disclosures of the other prior art of record to achieve Applicant's claimed invention absent improper hindsight.

Applicant respectfully submits that the prior art of record fails to teach or suggest the combination of elements or steps claimed by Applicant and the rejections of independent claims 1, 15, 25, 30, 31 and 36, and claims depending therefrom, should be withdrawn.

Secondary Considerations

Applicant submitted the Declaration of Daniel R. Kroeger, President and CEO of Gold Medal Products Company, assignee of the present invention, as further compelling evidence of the non-obviousness of the present invention. In that Declaration, seventeen companies were identified which have copied the present

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invention and/or are now offering cotton candy packaged in a sealed container as described and claimed in the present application. Mr. Kroeger states that to the best of his knowledge, these products were introduced only after the claimed invention was observed in the marketplace.

Examiner has objected to the Declaration and failed to consider the proffered evidence by taking the position that the USPTO has no convenient way to verify when these seventeen products were introduced in the market or when they were first made public.

Here we have a Declaration executed with the knowledge that willful false statements are punishable under 18 U.S.C. §1001, containing a statement, made of Mr. Kroeger's own knowledge, which states that to the best of his knowledge, these products were introduced only after the claimed invention was observed in the marketplace. Examiner has not challenged Mr. Kroeger's qualifications or drawn a contrary inference from any other evidence. Moreover, Mr. Kroeger is not required to prove the truth of his statement for it to be considered by Examiner. Without contrary evidence provided by Examiner, the statement must be accepted as fact and the evidence of secondary considerations must be considered by Examiner.

In view of the above, Applicant respectfully submits that claims 1-43 are allowable and the rejections should be withdrawn. Reconsideration and allowance of the present application is respectfully requested.

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Conclusion

In view of the foregoing response including the remarks, this application is submitted to be in complete condition for allowance and early notice to this affect is earnestly solicited. If there is any issue that remains which may be resolved by telephone conference, Examiner is invited to contact the undersigned in order to resolve the same and expedite the allowance of this application.

Applicant does not believe that this response requires that any fees be submitted, however, if any fees are deemed necessary, these may be charged to Deposit Account No. 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.



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